PT 05-18
Tax Type: Property Tax
Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

In re 2002 Property Tax Exemption Applications of METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO	Docket No. 04-PT-0040 Docket Nos. / PINs:	
	02-22-303 / 10-16-301-003	02-33-309 / 10-01-405-005
	02-22-304 / 10-16-401-003	02-33-310 / 10-11-404-002
	02-33-305 / 10-16-403-001	02-33-311 / 10-14-101-001
	02-33-306 / 10-11-302-002	02-33-312 / 10-15-302-001
	02-33-307 / 10-11-402-007	02-33-313 / 10-15-202-001
	02-33-308 / 10-11-402-008	02-33-314 / 10-15-301-001
	John E. White, Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Michael Rosenburg and Frank Gardner appeared on behalf of the Metropolitan Water Reclamation District of Greater Chicago; Robert Rybica, Assistant State's Attorney for DuPage County, appeared for intervener DuPage County Board of Review; Mark Dyckman, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis:

This matter arose after the DuPage County Board of Review ("DuPage") protested the Illinois Department of Revenue's ("Department") decision to grant certain Illinois property tax exemption applications filed by the Metropolitan Water Reclamation District of Greater Chicago ("the District") for 2002. The issue involves the effect of § 15-143 of the Illinois Property Tax Code. The parties agreed to proceed via cross-motions for summary judgment by DuPage and the District, and all parties stipulated to

relevant facts. I recommend the District's exemption applications be denied.

Statements of Undisputed Fact:

1. During the tax year at issue, the District owned twelve parcels of real property, whose property index numbers ("PIN's") are set forth below:

10-16-301-003	10-16-401-003	10-16-403-001
10-11-302-002	10-11-402-007	10-11-402-008
10-01-405-005	10-11-404-002	10-14-101-001
10-15-302-001	10-15-202-001	10-15-301-001

Stipulation of Facts ("Stip."), *passim*.

2. Each of these twelve parcels of real property is situated entirely within the boundaries of DuPage County, Illinois. Stip., *passim*.

3. During the period at issue, Cook County was, and is currently, the only county in Illinois with a population greater than 3,000,000. *See* Northeastern Illinois Planning Commission ("NIPC"), U.S. Census Bureau Population Estimates for NIPC Area Counties, 1990-2003 (http://www.nipc.org/test/cnty2003.html) (site available as of 1/30/05); *see also* 5 **ILCS** 100/10-40(c) ("Notice may be taken of matters of which the circuit courts of this State may take judicial notice"); Illinois Fraternal Order of Police Labor Council v. Town of Cicero, 301 Ill. App. 3d 323, 332, 703 N.E.2d 559, 566 (1st Dist. 1998) (court may take judicial notice of a village's population). Thus, during the period at issue, DuPage County did not have a population in excess of 3,000,000.

4. The District is a metropolitan water reclamation district in Cook County, Illinois. *See* 70 **ILCS** 2605/1; PTAX-300 forms (Application for Non-Homestead

Property Tax Exemption – County Board of Review State of Facts) filed in this matter, Part 1, lines 2-3 (name and address of property owner); 5 **ILCS** 100/10-40(c) (I take official notice of this fact).

Facts Regarding § 15-143 of the Illinois Property Tax Code ("PTC")

5. Effective August 1999, the Illinois General Assembly amended the PTC by adding § 15-143, which provided:

> Metropolitan Water Reclamation Districts in counties with a population greater than 3,000,000. All property owned by metropolitan water reclamation districts in counties with a population greater than 3,000,000 is exempt. Any such property leased to an entity that is not exempt shall remain exempt, and the leasehold interest of the lessee shall be assessed under Section 9-195 of this Code.

35 **ILCS** 200/15-143 (1999) (added by P.A. 91-546 § 5, effective August 4, 1999).

6. Effective July 2004, the Illinois General Assembly amended § 15-143 to read as follows:

> Metropolitan Water Reclamation Districts in counties with a population greater than 3,000,000. All property that is located in a county with a population greater than 3,000,000 and that is owned by a metropolitan water reclamation district in a county with a population greater than 3,000,000 is exempt. Any such property leased to an entity that is not exempt shall remain exempt, and the leasehold interest of the lessee shall be assessed under Section 9-195 of this Code. The changes made by this amendatory Act of the 93rd General Assembly are declaratory of existing law.

35 **ILCS** 200/15-143 (2004) (added by P.A. 93-767, effective July 20, 2004).

Conclusions of Law:

Summary of Issues and Arguments

The two issues are whether the twelve parcels are exempt from Illinois property tax, pursuant to the version of PTC § 15-143 in effect in 2002, and whether a 2004 amendment to PTC § 15-143 applies to this matter. The District and DuPage filed cross-motions for summary judgment, each arguing that the text of PTC § 15-143, effective during 2002, justifies entry of summary judgment in its respective favor. Brief of the DuPage County Board of Review ("DuPage's Brief"), pp. 2-3; Memorandum in Support of Motion for Summary Judgment ("District's Brief"), pp. 2-5. The parties' motions and initial memoranda address only the first issue. The second issue, involving the alleged applicability of the 2004 amendment to PTC § 15-143, is addressed in their reply briefs.

The parties' motions both assert that the text of the 1999 version of PTC § 15-143 is clear and unambiguous. DuPage contends that the statute clearly exempts all property owned by a metropolitan water reclamation district which property is, itself, in a county with a population in excess of 3 million. DuPage's Brief, pp. 2-3. DuPage argues, in the alternative, that if it is determined that § 15-143 is ambiguous, the legislative history for the section reveals a legislative intent to deny the exemption to properties owned by the District, yet situated outside Cook County. *Id*., pp. 3-7.

The District counters that the text of the statute clearly exempts all property owned by any metropolitan water reclamation district that is, itself, in a county with a population greater than 3 million. District's Brief, pp. 2-4. The District then asserts that, since the text of the statute is clear, there is no need for resort to the legislative comments DuPage contends supports its construction of the statute. *Id*., p. 4. The District then asserts that the legislative intent behind § 15-143 was to put district owned property in the same position as other government owned property. *Id*. pp. 4-5 & Exhibit N, thereto

(copy of letter, dated 2/23/01, from Michael J. Luke, Special Assistant Attorney General, to Richard A. Devine, Cook County State's Attorney). Finally, the District argues that reading § 15-143 so as to allow exemption is consistent with the purpose of the PTC, which, the District contends, is to "protect government land from forfeiture." District's Brief, pp. 5-8.

Analysis

Is the 1999 Version of PTC § 15-143 Clear and Unambiguous?

I begin with a brief description of the process of statutory construction, from the relatively recent Illinois Supreme Court case of People ex rel. Birkett v. City of Chicago, 202 Ill. 2d. 36, 779 N.E.2d 875 (2002):

> The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent. [citations omitted] The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction. If the statutory language is ambiguous, however, we may look to other sources to ascertain the legislature's intent. A court will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing that statute. Indeed, a reasonable construction of an ambiguous statute by the agency charged with that statute's enforcement, if contemporaneous, consistent, long-continued, and in concurrence with legislative acquiescence, creates a presumption of correctness that is only slightly less persuasive than a judicial construction of the same act. A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways. The construction of a statute is a question of law that is reviewed *de novo*.

People ex rel. Birkett v. City of Chicago, 202 Ill. 2d. at 45-46, 779 N.E.2d at 881.

Thus, before there is any attempt to construe a particular statutory provision, one must first read the words the legislature used to see if the particular issue may be resolved simply by applying the plain and ordinary meaning of the statutory language. *Id*. At issue here is the first sentence of § 15-143, as originally enacted in 1999. The text of that sentence is, "All property owned by metropolitan water reclamation districts in counties with a population greater than 3,000,000 is exempt." 35 **ILCS** 200/15-143 (1999).

Since breaking a sentence into its constituent parts helps a reader understand what the writer intends to communicate, it will help here to identify all parts of the first sentence of PTC § 15-143. Like all sentences, this one has a subject and a predicate. John E. Warriner & Francis Griffith, English Grammar and Composition 23-24 (Harcourt, Brace & World, Inc.) (1965) (hereinafter, "Warriner & Griffith, Grammar [pp.]"). The complete predicate here consists of the words "is exempt." The word "is" is the verb, and the word "exempt" is a compliment that completes the meaning of the subject and the verb. Warriner & Griffith, Grammar 24, 27. Specifically, "exempt" is a predicate adjective that refers to and describes the subject of the sentence. *Id*. at 31. The complete subject for this sentence includes all of the words that come before "is exempt" and the simple subject is the word "property." *Id*. The word "all" is an adjective that describes "property."

Next, the phrase, "owned by metropolitan water reclamation districts" is a participial phrase. Warriner & Griffith, Grammar 36 ("A phrase is a group of words not containing a verb and its subject. A phrase is used as a single part of speech."), 40-42. A participial phrase is a phrase containing a participle and any complements or modifiers it may have. Warriner & Griffith, Grammar 42. A participle is a form of a verb that is not

used as the verb in the sentence, but which, instead, acts as an adjective. Warriner & Griffith, Grammar 41. In the first sentence of PTC § 15-143, "owned by" is a past participle, and "metropolitan water reclamation districts" is the complement of that participle. More specifically, "districts" is the simple object of the participle, and the words "metropolitan water reclamation" all modify that word. Thus, in the 1999 version of PTC § 15-143, the participial phrase "owned by metropolitan water reclamation districts" is an adjective that describes the simple subject "property."

The final phrase in the subject of the first sentence of PTC § 15-143 is the source of the problem. While it is clear that both phrases — "owned by metropolitan water reclamation districts" and "in counties with a population greater than 3,000,000" — are part of the sentence's complete subject, it is unclear whether the latter phrase modifies the simple subject or whether it is just a continuation of the participial phrase. That is to say, it is not clear whether the phrase "in counties with a population greater than 3,000,000" modifies "property," or the simple object of the participle, "districts."

The difference between the two possible readings of the 1999 version of PTC § 15-143 is the crux of this dispute. If the legislature meant "in counties with a population greater than 3,000,000" to modify "property," then the Illinois General Assembly intended to condition the exemption upon both the identity of the property's owner *and* upon the property's location. In the alternative, if the phrase modifies "districts," then the Illinois General Assembly intended to condition the exemption solely upon the identity of the property's owner, regardless where the property itself might be located or, for that matter, regardless of the use to which the property might be put. The District understands the second phrase to modify "districts;" DuPage understands it to modify

"property." I find each such construction to be reasonable. And that, in a nutshell, is the very definition of an ambiguous statute. *See* People ex rel. Birkett v. City of Chicago, 202 Ill. 2d. at 46, 779 N.E.2d at 881 ("A statute is ambiguous if it is capable of being understood by reasonably well-informed persons in two or more different ways").

The District, however, refuses to acknowledge that someone might reasonably read the 1999 version of PTC § 15-143 differently than it does. Its refusal is remarkable, considering that one of the documents the District attached as an exhibit to its motion contains the following paragraph:

> The language of section 15-143 may be interpreted in two different ways: the phrase "in counties with a population greater than 3,000,000" can be read as modifying "property", thereby exempting from taxation only that property owned by the District which is located in Cook County; alternatively, the phrase can be read as modifying "metropolitan water reclamation districts", thereby exempting all property owned by such districts from taxation wherever the property may be located.

District's Brief, Exhibit N, p. 2. The document containing the quoted paragraph is a letter, dated February 23, 2001, written by Special Assistant Attorney General Michael Luke to Richard Devine, Cook County State's Attorney, in response to a question posed to the Illinois Attorney General's Office by an assistant state's attorney asking for an opinion whether PTC § 15-143 exempted property owned by the District that was situated in counties outside of Cook County. *Id*., p. 1. The District cites the writer's sources and conclusions as support for its motion.

Thus, the District has filed a motion for summary judgment to assert that, as a matter of law, the text of the 1999 version of PTC § 15-143 clearly and unambiguously authorizes the sought-after exemptions. Yet the evidence the District presents to buttress

its implied claim that no reasonable person could possibly understand the text of § 15-143 in a way other than the way the District understands it, includes an express acknowledgement that § 15-143 could be understood in the quite different way DuPage reads it. *Compare* District's Brief, p. 3 ("Not by any stretch of grammatical construction could '*counties*' or '*population*' be construed as modifying '*property*'.") *with* District's Brief, Exhibit N, p. 2 ("the phrase 'in counties with a population greater than 3,000,000' can be read as modifying 'property' …"). I wholeheartedly agree that Luke's analysis supports a conclusion that the way the District reads PTC § 15-143 is reasonable. But what the District ignores is that Luke's analysis was an exercise in statutory construction. *See id*. It similarly ignores that one performs such an analysis only when the express text of a statute is *not* clear on its face. Acme Brick & Supply Co. v. Department of Revenue, 133 Ill. App. 3d 757, 763, 468 N.E.2d 1380, 1384 (2d Dist. 1985) ("Rules of construction are used only for the purpose of resolving ambiguities …."). In any event, the District's own evidence supports a conclusion that the 1999 version of PTC § 15-143 was capable of being understood by reasonably well-informed persons in two different ways.

Should the 2004 Amendment to PTC § 15-143 Apply to This Dispute?

As the Illinois Supreme Court has repeatedly acknowledged, once a determination has been made that a particular statute is ambiguous, a court may use, *inter alia*, established rules of construction to ascertain the legislature's intent. People ex rel. Birkett v. City of Chicago, 202 Ill. 2d. at 46, 779 N.E.2d at 881 (and cases cited therein). Here, however, and before this matter was completely briefed by the parties, the Illinois General Assembly amended PTC § 15-143. As amended by P.A. 93-767, PTC § 15-143 currently provides:

> Metropolitan Water Reclamation Districts in counties with a population greater than 3,000,000. All property that is located in a county with a population greater than 3,000,000 and that is owned by a metropolitan water reclamation district in a county with a population greater than 3,000,000 is exempt. Any such property leased to an entity that is not exempt shall remain exempt, and the leasehold interest of the lessee shall be assessed under Section 9-195 of this Code. The changes made by this amendatory Act of the 93rd General Assembly are declaratory of existing law.

35 **ILCS** 200/15-143 (2004) (added by P.A. 93-767, effective July 20, 2004).

The 2004 amendment makes it perfectly clear that the exemption is conditioned upon both the identity of the owner and the location of the property, whereas the text of the section as originally enacted was ambiguous as to the exemption's scope. The question presented by the parties' replies is whether the Illinois General Assembly's clear and unambiguous 2004 expression of the scope of the exemption authorized by PTC § 15-143 should apply to the District's exemption applications for 2002. DuPage asserts that the 2004 amendment should apply to this dispute since the Illinois General Assembly included within the text of the amendment the following statement, "The changes made by this amendatory Act of the 93rd General Assembly are declaratory of existing law." 35 **ILCS** 200/15-143 (2004). *See* Reply Brief of the DuPage County Board of Review ("DuPage's Reply"), p. 2 & Exhibit 1 thereto (copy of the text of P.A. 93-0767).

The District disagrees. It first implies that the sentence cited by DuPage, and included within the amended text of PTC 15-143, does not reflect an intent to apply the 2004 amendment to prior years. Metropolitan Water Reclamation District of Greater Chicago's Sur-Reply Brief in Support of Its Motion for Summary Judgment ("District's Reply"), p. 1. It also contends that the amendment made substantive changes to PTC § 15-143, and that the Illinois Supreme Court's recent decision in Caveney v. Bower, 207

Ill. 2d 82, 797 N.E.2d 596 (2003) prohibits any retroactive application of such substantive amendments. *Id*., p. 2. I will address the District's arguments regarding Caveney first.

Caveney involved a husband and wife's claim that they were entitled to a credit authorized by § 201(k) of the Illinois Income Tax Act ("IITA") for research and development expenses incurred, in tax years 1993 through 1995, by a subchapter "S" corporation in which they were shareholders. Caveney, 207 Ill. 2d at 84, 797 N.E.2d at 597. Caveney was a Protest Act case, which means that it began after taxpayers paid the amount of tax at issue, and then filed a suit in circuit court asking that the Department be prevented from transferring the monies paid under protest to the State Treasurer, and asking the court to decide the substantive tax issue. *Id*. (*citing* 30 **ILCS** 230/1 *et seq.* (2000), the State Officers and Employees Money Disposition Act). At trial, the Caveneys filed a motion for summary judgment, arguing that they were entitled to the credit pursuant to the version of IITA § 201(k) that was in effect during the tax years at issue. Alternatively, they argued that if § 201(k) did not authorize the sought-after credit, that section violated the Uniformity Clause of the Illinois Constitution. Caveney, 207 Ill. 2d at 84-85, 797 N.E.2d at 597. The trial court granted taxpayer's motion, and the State appealed.

In the appellate court, the Caveneys asserted that they were entitled to the credit pursuant to a 1999 amendment to IITA § 201(k) that, taxpayers claimed, was intended to be applicable for prior tax years. The appellate court affirmed solely on that basis. Caveney, 207 Ill. 2d at 85, 797 N.E.2d at 598. The Department filed a plea for leave to appeal with the Illinois Supreme Court, which issued a supervisory order remanding the

matter back the appellate court to reconsider its judgment in light of Commonwealth Edison Co. v. Will Co. Collector, 196 Ill. 2d 27, 749 N.E.2d 964 (2001). Caveney, 207 Ill. 2d at 85, 797 N.E.2d at 598. Following that reconsideration, the appellate court again affirmed the trial court's grant of summary judgment to taxpayers. Thereafter, the Illinois Supreme Court granted the State's leave to appeal. *Id*.

On the substantive issues, the Illinois Supreme Court first held that taxpayers were not entitled to a credit under the plain text of IITA § 201(k) in effect during the tax years at issue because that provision clearly and unambiguously did not extend any credit to taxpayers who did not, themselves, incur the qualified research and development expenses. Caveney, 207 Ill. 2d at 88-89, 797 N.E.2d at 599-600. The Court also concluded that the 1999 amendment to IITA § 201(k) did not apply to the tax years at issue. *Id*. at 95-96, 797 N.E.2d at 603-04. The Court did so on the basis of § 4 of Illinois' Statute on Statutes, since the 1999 amendment bore no clear statement of the legislature's intent regarding the amendment's temporal reach. *Id*. at 95, 797 N.E.2d at 603. Specifically, the Court wrote:

> Turning back to the question at hand, then, we must decide whether the 1999 amendment to section 201(k) may be applied retroactively to plaintiffs' 1993, 1994, and 1995 research and development expenditures. Our first task, of course, is to ascertain whether the legislature has clearly indicated the temporal reach of the 1999 amendment. See *Commonwealth Edison*, 196 Ill.2d at 38, 255 Ill.Dec. 482, 749 N.E.2d 964. Unquestionably, it has. Unlike in *Commonwealth Edison*, however, the legislature's clear indication is not found in the amendatory act itself. Indeed, the 1999 amendment to section 201(k) specifically states that "[n]o inference shall be drawn from this amendatory Act *** in construing this Section for taxable years beginning before January 1, 1999." 35 ILCS 5/201(k) (West 2000). Rather, the legislature's clear pronouncement is found in section 4 of the Statute on Statutes, which

> "forbids retroactive application of substantive changes to statutes." *Glisson*, 202 Ill.2d at 506-07, 270 Ill.Dec. 57, 782 N.E.2d 251. Clearly, the 1999 amendment to section 201(k) is a substantive change in the law, as it establishes an income tax credit for S corporation shareholders that previously did not exist. This being the case, "[i]t is to be assumed the amendatory act was framed in view of the provisions of said section, and that it was the legislative intent the amendatory act should have prospective operation, only." See *Connell*, 210 Ill. at 386-87, 71 N.E. 350.

Caveney, 207 Ill. 2d. at 95-96, 797 N.E.2d at 603-04.

What was new (and somewhat controversial, *see* Caveney, 207 Ill. 2d. at 95-96, 797 N.E.2d at 603-04 (Justice Freeman's concurring opinion)) about the Caveney decision was the Court's linkage of § 4 of Illinois' Statute on Statutes to the test inspired by the United State Supreme Court's decision in Landgraf v. USI Film Products, Inc., 511 U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994). But the Caveney Court reaffirmed its prior decision, in Commonwealth Edison Co. v. Will Co. Collector, 196 Ill. 2d 27, 749 N.E.2d 964 (2001), that the Landgraf test was the test to be used by Illinois courts when called upon to determine whether a statutory amendment could be applied to a dispute that arose before the amendment was passed. The Caveney Court followed the Landgraf test when determining that applying the 1999 amendment to the tax years at issue would have a retroactive impact, because the amendment made substantive changes to the prior version of the statute. *See* Caveney, 207 Ill. 2d. at 95-96, 797 N.E.2d at 603-04. Therefore, the Landgraf test must be used here, to resolve whether the 2004 amendment to PTC § 15-143 may be applied to the dispute.

As the Illinois Supreme Court noted in Commonwealth Edison v. Will Co. Collector:

> Under the *Landgraf* test, if the legislature has clearly indicated what the temporal reach of an amended statute should be, then, absent a constitutional prohibition, that expression of legislative intent must be given effect. However, when the legislature has not indicated what the reach of a statute should be, then the court must determine whether applying the statute would have a retroactive impact, *i.e.*, "whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf,* 511 U.S. at 280, 114 S.Ct. at 1505, 128 L.Ed.2d at 261-62. If there would be no retroactive impact, as that term is defined by the court, then the amended law may be applied. *Landgraf,* 511 U.S. at 273-74, 275, 114 S.Ct. at 1501, 1502, 128 L.Ed.2d at 257, 258. If, however, applying the amended version of the law would have a retroactive impact, then the court must presume that the legislature did not intend that it be so applied. *Landgraf,* 511 U.S. at 280, 114 S.Ct. at 1505, 128 L.Ed.2d at 261-62.

Commonwealth Edison Co. v. Will Co. Collector, 196 Ill. 2d at 38, 749 N.E.2d at 971.

Here, when the Illinois General Assembly clearly and unambiguously declared, for the first time, that the exemption authorized by PTC § 15-143 was applicable to a metropolitan water reclamation district's property that was situated in a county with a population greater than 3 million, it also clearly indicated what the temporal reach of that amendment should be. That is, it included within the amended text of PTC 15-143 itself, a statement that, "The changes made by this amendatory Act of the 93rd General Assembly are declaratory of existing law." 35 **ILCS** 200/15-143 (2004) (added by P.A. 93-767, effective July 20, 2004). That statement clearly reflects the Illinois General Assembly's intent that the 2004 amendment be understood as its declaration of what the existing statute meant. 5 **ILCS** 70/1.18 (" 'Laws now in force,' and words of similar import, mean the laws in force at the time the Act containing the words shall take

effect."); People ex rel. Village of Orland Hills v. Village of Orland Park, 316 Ill. App. 3d 327, 335, 734 N.E.2d 954, 960 (1st Dist. 2000).

I acknowledge that whether a court ultimately heeds the legislature's statement of the intended temporal reach for an amendment may depend on other considerations, which considerations were not discussed by the Illinois Supreme Court in Caveney and in Commonwealth Edison. For example, in People ex rel. Village of Orland Hills v. Village of Orland Park, 316 Ill. App. 3d 327, 335, 734 N.E.2d 954, 960 (1st Dist. 2000), the court determined that the original version of a statute the legislature purported to have clarified in a subsequent amendment had been clear on its face. The court also noted that the prior statute had already been judicially interpreted in a manner contrary to the way articulated in the subsequent amendment. Village of Orland Park, 316 Ill. App. 3d at 335-56, 734 N.E.2d at 960-61. Under those facts, and based on constitutional separation of powers concerns, the court refused to defer to the legislature's clear statement that the amendment "[was] declaratory of existing law …." *Id.* Here, however, no such facts exist. That is, no Illinois court has interpreted the text of the 1999 version of PTC § 15-143. Nor has the Department, the agency empowered to administer and enforce the terms of the PTC, formally adopted a regulation setting forth the agency's interpretation of this particular statutory provision. *See* People ex rel. Birkett v. City of Chicago, 202 Ill. 2d. at 46, 779 N.E.2d at 881.

The District attempts to characterize the Department's 2003 grants of its exemption applications for this tax year as constituting the agency's prior interpretation of the 1999 version of PTC § 15-143, which, it implies, precludes the agency from changing its mind based on the 2004 amendment. District's Reply, pp. 1, 3. That

argument, however, ignores the fundamental difference between an agency's initial determinations of fact and its generally applicable public statements of how it will interpret an ambiguous statute, which must be done via rulemaking (5 **ILCS** 100/5-5, 5-35; Union Electric Co. v. Department of Revenue, 136 Ill. 2d 385, 400, 556 N.E.2d 236 (1990)), or its public statements regarding how it will apply a particular statute to a given set of facts, which it may announce following adjudication. Ogden Chrysler Plymouth, Inc. v. Bower, 348 Ill. App. 3d 944, 957-58, 809 N.E.2d 792, 804 (2nd Dist. 2004).

The Department's initial reviews and grants of the exemptions in this matter are neither adjudications nor do they collectively constitute a formal agency interpretation of the 1999 version of PTC § 15-143. Under the Illinois Administrative Procedures Act ("IAPA"), a " '[c]ontested case' means an adjudicatory proceeding (not including ratemaking, rulemaking, or quasi-legislative, informational, or similar proceedings) in which the individual legal rights, duties, or privileges of a party are required by law to be determined by an agency only after an opportunity for a hearing." 5 **ILCS** 100/1-30. In other words, the agency's decision ultimately issued as a result of *this* contested case will be an adjudication, but the Department's first reviews of DuPage's decisions regarding the District's non-homestead exemption applications were not. *Compare* 5 **ILCS** 100/1-30 *with* 35 **ILCS** 200/8-35 *and* 35 **ILCS** 200/16-70. The Department, moreover, has never exercised its rulemaking powers to formally announce an interpretation of the 1999 version of PTC § 15-143.

I similarly reject the District's argument that the 2004 amendment to PTC § 15-143 made substantive changes to the 1999 version of the statute. District's Reply, p. 2. Specifically, the District asserts that changing the words "districts" and "counties," as

used in the 1999 version of the statute, to "district" and "county," constituted substantive changes. *Id*. Those changes were made when the legislature reworded the phrase "owned by metropolitan water reclamation districts in counties with a population greater than 3,000,000 …" to "owned by a metropolitan water reclamation district in a county with a population greater than 3,000,000 …." Both versions of the phrase clearly apply to any metropolitan water reclamation district in any county with a population greater than 3 million. I fail to see how the rewording complained of effected any substantive change to this statute.

Finally, even if the Illinois General Assembly had not included within the 2004 amendment a clear statement that the amendment was declarative of existing law, the fact remains that "[i]f there would be no retroactive impact, … then the amended law may be applied." Commonwealth Edison Co. v. Will Co. Collector, 196 Ill. 2d at 38, 749 N.E.2d at 971. The 2004 amendment to PTC § 15-143 did not impair the Districts rights, it did not increase its liability for any past conduct and it did not impose any new duty to transactions already completed. The District's right to an exemption for the properties in 2002 depended upon the legislative intent underlying PTC § 15-143. The text of the 1999 version of that provision did not clearly set forth the legislature's intent as to the scope of that exemption. That intent was clarified only after the General Assembly passed the 2004 amendment to that section. The ambiguity that existed within PTC § 15-143 between 1999 and 2004 cannot inure to the District's benefit here, however, because ambiguities within property tax exemption statutes are not to be construed in favor of exemption. *See* Rogers Park Post No. 108 v. Brenza, 8 Ill. 2d 286, 290-91, 134 N.E.2d 292, 295 (1956) ("In determining whether property is included within the scope of a tax

exemption all facts are to be construed and all debatable questions resolved in favor of taxation. [citations omitted] *Every presumption is against the intention of the State to exempt property from taxation*.") (emphasis added).

Conclusion

I conclude that the 1999 version of PTC § 15-143 was ambiguous. I conclude further that the 2004 amendment to PTC 15-143 did not change Illinois law, it only made the existing statutory provision clear, for the first time since the exemption was created in 1999. Finally, there is no retroactive impact caused by applying the 2004 amendment to PTC § 15-143 to this dispute. I recommend, therefore, that the Director grant DuPage's motion for summary judgment, deny the District's motion for summary judgment, and that he deny the 2002 exemption applications for the properties at issue.

Date: 3/17/2005

John E. White
Administrative Law Judge